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Chapter No. 503
16/SS26/R6SG
CRS LBHR

SENATE BILL NO. 2778

Originated in Senate Liz Welch Secretary

SENATE BILL NO. 2778

AN ACT TO CREATE THE DUI TRANSPARENCY ACT; TO AMEND SECTION 63-1-31, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT JURISDICTION FOR APPEAL OF DRIVER'S LICENSE SUSPENSION LIES IN THE CIRCUIT OR COUNTY COURT; TO CREATE NEW SECTION 63-1-58, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT SUSPENSION OR RESTRICTION OF DRIVING PRIVILEGES RUN CONSECUTIVELY AND NOT CONCURRENTLY; TO AMEND SECTION 63-11-21, MISSISSIPPI CODE OF 1972, TO CONFORM; TO AMEND SECTION 63-11-23, MISSISSIPPI CODE OF 1972, TO REVISE THE APPEAL OF LICENSE SUSPENSION AND TO CLARIFY ADMINISTRATIVE SUSPENSION FOR TEST REFUSAL AND UPON CONVICTION OR NONADJUDICATION; TO AMEND SECTION 63-11-30, MISSISSIPPI CODE OF 1972, TO CLARIFY THE OFFENSE OF DRIVING UNDER THE INFLUENCE OF ALCOHOL OR OTHER DRUGS; TO AMEND SECTION 63-11-31, MISSISSIPPI CODE OF 1972, TO REVISE THE REQUIREMENT OF INSTALLATION AND MAINTENANCE OF IGNITION-INTERLOCK DEVICES, TO PLACE THE RESPONSIBILITY TO DETERMINE INDIGENCE ON THE TRIAL COURT, AND TO AUTHORIZE DRUG TESTING OF CERTAIN VIOLATORS; TO AMEND SECTION 63-11-37, MISSISSIPPI CODE OF 1972, TO REQUIRE COURT CLERKS TO SUBMIT CHARGING AND DISPOSITION INFORMATION TO THE DEPARTMENT OF PUBLIC SAFETY IN A TIMELY MANNER; TO AMEND SECTION 63-1-5, MISSISSIPPI CODE OF 1972, TO CONFORM; TO REQUIRE LAW ENFORCEMENT OFFICERS TO PERFORM NCIC CHECKS AND NOTE RESULTS; TO REPEAL SECTIONS 63-11-49, 63-11-51 AND 63-11-53, MISSISSIPPI CODE OF 1972, WHICH PROVIDE FOR THE SEIZURE, FORFEITURE AND DISPOSITION OF PROCEEDS OF VEHICLES USED IN A THIRD OR SUBSEQUENT DUI VIOLATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 63-1-31, Mississippi Code of 1972, is

amended as follows:

S. B. No. 2778

16/SS26/R6SG

Page 1

63-1-31. When a person is denied a license or any temporary driving permit after filing the proper application, he shall have the right within sixty (60) days thereafter to file a petition, in the county or circuit * * * court in the county wherein * * * the application was filed, praying for a hearing in the matter before the judge of the court in which * * * the application is presented. * * * The judge * * * is hereby vested with jurisdiction to hear such matters forthwith within termtime or during vacation, upon five (5) days' written notice to the officer who refused to issue * * * the license or any temporary driving permit. * * * The hearing shall be conducted at * * * a place as may suit the convenience of the court. On the hearing of the petition, testimony may be taken, and the court shall render * * * judgment in the matter as it deems right and proper under the law and evidence.

SECTION 2. The following shall be codified as Section 63-1-58, Mississippi Code of 1972:

63-1-58. **License suspensions and restrictions to run consecutively.** Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of the Implied Consent Law or any administrative suspension imposed under this chapter shall run consecutively and not concurrently.

SECTION 3. Section 63-11-21, Mississippi Code of 1972, is amended as follows:

63-11-21. If a person refuses upon the request of a law enforcement officer to submit to a chemical test of his breath designated by the law enforcement agency as provided in Section 63-11-5, none shall be given, but the officer shall at that point demand the driver's license of the person, who shall deliver his driver's license into the hands of the officer. If a person refuses to submit to a chemical test under the provisions of this chapter, the person shall be informed by the law enforcement officer that the refusal to submit to the test shall subject him to * * * suspension of the privilege to operate a motor vehicle. The officer shall give the driver a receipt for his license on forms prescribed and furnished by the Commissioner of Public Safety. The officer shall forward the driver's license together with a sworn report to the Commissioner of Public Safety stating that he had reasonable grounds and probable cause to believe the person had been * * * operating a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor * * * or any other substance which may impair a person's mental or physical ability, stating * * * the grounds, and that the person had refused to submit to the chemical test of his breath upon request of the law enforcement officer.

SECTION 4. Section 63-11-23, Mississippi Code of 1972, is amended as follows:

63-11-23. (1) Administrative license suspension for test refusal. The Commissioner of Public Safety, or his authorized agent, shall review the sworn report by a law enforcement officer as provided in Section 63-11-21.

(a) If upon review the Commissioner of Public Safety, or his authorized agent, finds (* * * i) that the law enforcement officer had reasonable grounds and probable cause to believe the person had been * * * operating a motor vehicle upon the public highways, public roads and streets of this state while under the influence of intoxicating liquor or any other substance that may impair a person's mental or physical ability; (* * * ii) that he refused to submit to the chemical test upon request of the officer; and (* * * iii) that the person was informed that his license and driving privileges would be suspended or denied if he refused to submit to the chemical test, then the Commissioner of Public Safety, or his authorized agent, shall give notice to the licensee that, unless the person obtains an interlock-restricted license, his license or permit to drive, or any nonresident operating privilege, shall be suspended thirty (30) days after the date of the notice for a period of ninety (90) days * * * if the person has not previously been convicted of or nonadjudicated for a violation of Section 63-11-30, or, for a period of one (1) year * * * if the person was previously convicted or nonadjudicated under Section 63-11-30. * * * If the commissioner or his authorized agent determines that the license or permit

should not be suspended, he shall return the license or permit to the licensee.

(b) The notice of suspension shall be in writing and * * * conform to Section 63-1-52 * * *.

(2) Extension or suspension of privilege to drive; request for trial. (a) If the chemical testing of a person's breath indicates the blood alcohol concentration was eight one-hundredths percent (.08%) or more for persons who are above the legal age to purchase alcoholic beverages under state law, or two one-hundredths percent (.02%) or more for persons who are below the legal age to purchase alcoholic beverages under state law, based upon grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath as shown by a chemical analysis of * * * the person's blood, * * * breath, or urine, the arresting officer shall seize the license and give the driver a receipt for his license on forms prescribed by the Commissioner of Public Safety and shall promptly forward the license together with a sworn report to the Commissioner of Public Safety. The receipt given a person * * * shall be valid as a permit to operate a motor vehicle for * * * thirty (30) days in order that the defendant may be processed through the court having original jurisdiction and a final disposition had.

(b) If the defendant requests a trial within thirty (30) days and trial is not commenced within thirty (30) days, then

the court shall determine if the delay in the trial is the fault of the defendant or his counsel. If the court finds that it is not the fault of the defendant or his counsel, then the court shall order the defendant's * * * privileges to operate a motor vehicle to be extended until the defendant is convicted upon final order of the court.

(c) If a receipt or permit to drive issued * * * under this subsection expires without a trial having been requested as provided * * * in this subsection, then the Commissioner of Public Safety or his authorized agent shall suspend the license or permit to drive or any nonresident operating privilege for the applicable period of time as provided * * * in subsection (1) of this section.

(3) Offenders driving without a license. If the person is a resident without a license or permit to operate a motor vehicle in this state, the Commissioner of Public Safety, or his authorized agent, shall deny to the person the issuance of a license or permit for a period of one (1) year beginning thirty (30) days after the date of notice of * * * the suspension.

(4) Appeal. It shall be the duty of the municipal prosecuting attorney, county prosecuting attorney, an attorney employed under the provisions of Section 19-3-49, or * * * if there is * * * not a prosecuting attorney for the municipality or county, the duty of the district attorney to represent the state in any hearing on a de novo appeal held under the provisions of

Section 63-11-25, * * * Section 63-11-37 * * * or * * * Section 63-11-30 * * *.

(5) **Suspension subsequent to conviction.** Unless the person obtains an interlock-restricted license or the court orders the person to exercise the privilege to operate a motor vehicle only under an interlock-restricted license, thirty (30) days after receipt of the court abstract documenting a person's conviction under Section 63-11-30, the Department of Public Safety shall suspend the driver's license and privileges of the person to operate a motor vehicle as follows:

(a) When sentenced under Section 63-11-30(2):

(i) For a first offense: one hundred twenty (120) days;

(ii) For a second offense: one (1) year;

(iii) For a third offense: for the full period of the person's sentence; upon release from incarceration, the person will be eligible for only an interlock-restricted license for three (3) years;

(iv) For a fourth or subsequent offense: for the full period of the person's sentence; upon release from incarceration, the person will be eligible for only an interlock-restricted license for ten (10) years.

(b) When sentenced under Section 63-11-30(3) (Zero Tolerance for Minors):

(i) For a first offense: one hundred twenty (120) days;

(ii) For a second offense: one (1) year;

(iii) For a third offense occurring within five (5) years, suspend or deny the driving privilege for two (2) years or until the person reaches the age of twenty-one (21), whichever is longer.

(6) **Suspensions.** (a) Notices of suspension given under this section shall be in writing and conform to Section 63-1-52.

(b) Suspensions under this and any other chapter shall run consecutively and not concurrently.

(7) **License reinstatement.** A person is eligible for an unrestricted license when the person has completed an alcohol safety education program as provided in Section 63-11-32, has satisfied all other conditions of law and of the person's sentence or nonadjudication, and is not otherwise barred from obtaining an unrestricted license.

SECTION 5. Section 63-11-30, Mississippi Code of 1972, is amended as follows:

63-11-30. (1) It is unlawful for a person to drive or otherwise operate a vehicle within this state if the person:

(a) Is under the influence of intoxicating liquor;

(b) Is under the influence of any other substance that has impaired the person's ability to operate a motor vehicle;

(c) Is under the influence of any drug or controlled substance, the possession of which is unlawful under the Mississippi Controlled Substances Law; or

(d) Has an alcohol concentration in the person's blood, based upon grams of alcohol per one hundred (100) milliliters of blood, or grams of alcohol per two hundred ten (210) liters of breath, as shown by a chemical analysis of the person's breath, blood or urine administered as authorized by this chapter, of:

(i) Eight one-hundredths percent (.08%) or more for a person who is above the legal age to purchase alcoholic beverages under state law;

(ii) Two one-hundredths percent (.02%) or more for a person who is below the legal age to purchase alcoholic beverages under state law; or

(iii) Four one-hundredths percent (.04%) or more for a person operating a commercial motor vehicle.

(2) Except as otherwise provided in subsection (3) of this section (Zero Tolerance for Minors):

(a) **First offense DUI.** (i) * * * Upon conviction of any person for the first offense of violating subsection (1) of this section where chemical tests * * * under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00), or imprisoned for not more than forty-eight (48) hours in jail, or

both; the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within * * * six (6) months of sentencing. The court may substitute attendance at a victim impact panel instead of forty-eight (48) hours in jail. * * *

(ii) Suspension of commercial driving privileges * * * is governed by Section 63-1-216 * * *.

(iii) A qualifying first offense * * * may be nonadjudicated by the court under subsection (14) of this section. The holder of a commercial driver's license or a commercial learning permit is ineligible for nonadjudication.

(iv) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(b) **Second offense DUI.** (i) * * * Upon any second conviction of any person violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a misdemeanor, fined not less than Six Hundred Dollars (\$600.00) nor more than One Thousand Five Hundred Dollars (\$1,500.00), shall be imprisoned not less than five (5) days nor more than * * * six (6) months and sentenced to community service work for not less than ten (10) days nor more than * * * six (6) months. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer

any suspension or sentence reduction as part of a plea bargain. * * *

(ii) Suspension of commercial driving privileges * * * is governed by Section 63-1-216.

(iii) Eligibility for an interlock-restricted license is governed by Section 63-11-31 and suspension of regular driving privileges is governed by Section 63-11-23.

(c) **Third * * * offense DUI.** (i) * * * For * * * a third conviction of * * * a person for violating subsection (1) of this section, the offenses being committed within a period of five (5) years, the person shall be guilty of a felony and fined not less than Two Thousand Dollars (\$2,000.00) nor more than Five Thousand Dollars (\$5,000.00), and shall serve not less than one (1) year nor more than five (5) years in the custody of the Department of Corrections. For any offense that does not result in serious injury or death to any person, the sentence of incarceration may be served in the county jail rather than in the State Penitentiary at the discretion of the circuit court judge. The minimum penalties shall not be suspended or reduced by the court and no prosecutor shall offer any suspension or sentence reduction as part of a plea bargain. * * *

(ii) The suspension of commercial driving privileges * * * is governed by Section 63-1-216.

(iii) The suspension of regular driving privileges is governed by Section 63-11-23.

(d) Fourth and subsequent offense DUI. (i) For any fourth or subsequent conviction of a violation of subsection (1) of this section, without regard to the time period within which the violations occurred, the person shall be guilty of a felony and fined not less than Three Thousand Dollars (\$3,000.00) nor more than Ten Thousand Dollars (\$10,000.00), and shall serve not less than two (2) years nor more than ten (10) years in the custody of the Department of Corrections.

(ii) The suspension of commercial driving privileges is governed by Section 63-1-216.

(iii) A person convicted of a fourth or subsequent offense is ineligible to exercise the privilege to operate a motor vehicle that is not equipped with an ignition-interlock device for ten (10) years.

(e) * * * Any person convicted of a second or subsequent violation of subsection (1) of this section shall receive an in-depth diagnostic assessment, and if as a result of the assessment is determined to be in need of treatment for alcohol or drug abuse, the person * * * must successfully complete treatment at a program site certified by the Department of Mental Health. Each person who receives a diagnostic assessment shall pay a fee representing the cost of the assessment. Each person who participates in a treatment program shall pay a fee representing the cost of treatment.

(* * *f) The use of ignition-interlock devices * * *
is governed by Section 63-11-31

(3) **Zero Tolerance for Minors.** (a) This subsection shall be known and may be cited as Zero Tolerance for Minors. The provisions of this subsection shall apply only when a person under the age of twenty-one (21) years has a blood alcohol concentration of two one-hundredths percent (.02%) or more, but lower than eight one-hundredths percent (.08%). If the person's blood alcohol concentration is eight one-hundredths percent (.08%) or more, the provisions of subsection (2) shall apply.

(b) (i) A person under the age of twenty-one (21) is eligible for nonadjudication of a qualifying first offense by the court pursuant to subsection (14) of this section.

(ii) Upon conviction of any person under the age of twenty-one (21) years for the first offense of violating subsection (1) of this section where chemical tests provided for under Section 63-11-5 were given, or where chemical test results are not available, the person shall be fined Two Hundred Fifty Dollars (\$250.00); the court shall order the person to attend and complete an alcohol safety education program as provided in Section 63-11-32 within * * * six (6) months. * * * The court may also require attendance at a victim impact panel.

(c) A person under the age of twenty-one (21) years who is convicted of a second violation of subsection (1) of this section, the offenses being committed within a period of five (5)

years, shall be fined not more than Five Hundred Dollars (\$500.00). * * *

(d) A person under the age of twenty-one (21) years who is convicted of a third or subsequent violation of subsection (1) of this section, the offenses being committed within a period of five (5) years, shall be fined not more than One Thousand Dollars (\$1,000.00) * * *.

(e) * * * License suspension is governed by Section 63-11-23 and ignition interlock is governed by Section 63-11-31.

(f) Any person under the age of twenty-one (21) years convicted of a third or subsequent violation of subsection (1) of this section * * * must complete treatment of an alcohol or drug abuse program at a site certified by the Department of Mental Health.

(4) **DUI test refusal.** In addition to the other penalties provided in this section, every person refusing a law enforcement officer's request to submit to a chemical test of the person's breath as provided in this chapter, or who was unconscious at the time of a chemical test and refused to consent to the introduction of the results of the test in any prosecution, shall suffer an additional administrative suspension of driving privileges as set forth in Section 63-11-23. * * *

(5) **Aggravated DUI.** (a) Every person who operates any motor vehicle in violation of the provisions of subsection (1) of this section and who in a negligent manner causes the death of

another or mutilates, disfigures, permanently disables or destroys the tongue, eye, lip, nose or any other limb, organ or member of another shall, upon conviction, be guilty of a separate felony for each victim who suffers death, mutilation, disfigurement or other injury and shall be committed to the custody of the State Department of Corrections for a period of time of not less than five (5) years and not to exceed twenty-five (25) years for each death, mutilation, disfigurement or other injury, and the imprisonment for the second or each subsequent conviction, in the discretion of the court, shall commence either at the termination of the imprisonment for the preceding conviction or run concurrently with the preceding conviction. Any person charged with causing the death of another as described in this subsection shall be required to post bail before being released after arrest.

(b) A holder of a commercial driver's license who is convicted of operating a commercial motor vehicle with an alcohol concentration of eight one-hundredths percent (.08%) or more shall be guilty of a felony and shall be committed to the custody of the Department of Corrections for not less than two (2) years and not more than ten (10) years.

(* * * c) The court * * * shall order an ignition-interlock restriction on the offender's privilege to drive as a condition of probation or post-release supervision not to exceed * * * five (5) years unless a longer restriction is required under other law.

(6) **DUI citations.** (a) Upon conviction of * * * a violation of subsection (1) of this section, the trial judge shall sign in the place provided on the traffic ticket, citation or affidavit stating that the person arrested either employed an attorney or waived his right to an attorney after having been properly advised. If the person arrested employed an attorney, the name, address and telephone number of the attorney shall be written on the ticket, citation or affidavit. The court clerk * * * must immediately send a copy of the traffic ticket, citation or affidavit, and any other pertinent documents concerning the conviction or other order of the court, to the Department of Public Safety as provided in Section 63-11-37.

(b) A copy of the traffic ticket, citation or affidavit and any other pertinent documents, having been attested as true and correct by the Commissioner of Public Safety, or his designee, shall be sufficient proof of the conviction for purposes of determining the enhanced penalty for any subsequent convictions of violations of subsection (1) of this section. The Department of Public Safety shall maintain a central database for verification of prior offenses and convictions.

(7) **Out-of-state prior convictions.** Convictions in another state, territory or possession of the United States, or under the law of a federally recognized Native American tribe, of violations for driving or operating a vehicle while under the influence of an intoxicating liquor or while under the influence of any other

substance that has impaired the person's ability to operate a motor vehicle occurring within five (5) years before an offense shall be counted for the purposes of determining if a violation of subsection (1) of this section is a second, third, fourth or subsequent offense and the penalty that shall be imposed upon conviction for a violation of subsection (1) of this section.

(8) **Charging of subsequent offenses.** For the purposes of determining how to impose the sentence for a second, third, fourth or subsequent conviction under this section, the affidavit or indictment shall not be required to enumerate previous convictions. It shall only be necessary that the affidavit or indictment states the number of times that the defendant has been convicted and sentenced within the past five (5) years under this section to determine if an enhanced penalty shall be imposed. The amount of fine and imprisonment imposed in previous convictions shall not be considered in calculating offenses to determine a second, third, fourth or subsequent offense of this section.

(9) **License eligibility for underage offenders. * * *** A person who is under the legal age to obtain a license to operate a motor vehicle at the time of the offense and who is convicted under this section shall not be eligible to receive a driver's license until the person reaches the age of eighteen (18) years.

(10) **License suspensions and restrictions to run consecutively.** Suspension or restriction of driving privileges for any person convicted of or nonadjudicated for violations of

subsection (1) of this section shall run consecutively to and not concurrently with any other administrative license suspension.

(11) **Ignition interlock.** If the court orders installation and use of an ignition-interlock device as provided in Section 63-11-31 for every vehicle operated by a person convicted or nonadjudicated under this section, * * * each device shall be installed, maintained and removed as provided in Section 63-11-31.

(12) **DUI child endangerment.** A person over the age of twenty-one (21) who violates subsection (1) of this section while transporting in a motor vehicle a child under the age of sixteen (16) years is guilty of the separate offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle. The offense of endangering a child by driving under the influence of alcohol or any other substance which has impaired the person's ability to operate a motor vehicle shall not be merged with an offense of violating subsection (1) of this section for the purposes of prosecution and sentencing. An offender who is convicted of a violation of this subsection shall be punished as follows:

(a) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a first conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than One Thousand

Dollars (\$1,000.00) or shall be imprisoned for not more than twelve (12) months, or both;

(b) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a second conviction shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than One Thousand Dollars (\$1,000.00) nor more than Five Thousand Dollars (\$5,000.00) or shall be imprisoned for one (1) year, or both;

(c) A person who commits a violation of this subsection which does not result in the serious injury or death of a child and which is a third or subsequent conviction shall be guilty of a felony and, upon conviction, shall be fined not less than Ten Thousand Dollars (\$10,000.00) or shall be imprisoned for not less than one (1) year nor more than five (5) years, or both; and

(d) A person who commits a violation of this subsection which results in the serious injury or death of a child, without regard to whether the offense was a first, second, third or subsequent offense, shall be guilty of a felony and, upon conviction, shall be punished by a fine of not less than Ten Thousand Dollars (\$10,000.00) and shall be imprisoned for not less than five (5) years nor more than twenty-five (25) years.

(13) **Expunction.** (a) Any person convicted under subsection (2) or (3) of this section of a first offense of driving under the influence and who was not the holder of a commercial driver's license or a commercial learning permit at the time of the offense

may petition the circuit court of the county in which the conviction was had for an order to expunge the record of the conviction at least five (5) years after successful completion of all terms and conditions of the sentence imposed for the conviction. Expunction under this subsection will only be available to a person:

(i) Who has successfully completed all terms and conditions of the sentence imposed for the conviction;

(ii) Who did not refuse to submit to a test of his blood or breath;

(iii) Whose blood alcohol concentration tested below sixteen one-hundredths percent (.16%) if test results are available;

(iv) Who has not been convicted of and does not have pending any other offense of driving under the influence; * * *

(v) Who has provided the court with justification as to why the conviction should be expunged * * *; and

(vi) Who has not previously had a nonadjudication or expunction of a violation of this section.

(b) A person is eligible for only one (1) expunction under this subsection, and the Department of Public Safety shall maintain a permanent confidential registry of all cases of expunction under this subsection for the sole purpose of

determining a person's eligibility for expunction, for nonadjudication, or as a first offender under this section.

(c) The court in its order of expunction shall state in writing the justification for which the expunction was granted and forward the order to the Department of Public Safety within five (5) days of the entry of the order.

(14) **Nonadjudication.** (a) For the purposes of this chapter, "nonadjudication" means that the court withholds adjudication of guilt and sentencing, either at the conclusion of a trial on the merits * * * or upon the entry of a plea of guilt by a defendant * * *, and places the defendant in a nonadjudication program conditioned upon the successful completion of * * * the requirements imposed by the court under this subsection.

(b) * * * A person is eligible for nonadjudication of an offense under this Section 63-11-30 only one (1) time under any provision of a law that authorizes nonadjudication * * * and only for an offender:

(i) Who has successfully completed all terms and conditions imposed by the court after placement of the defendant in a nonadjudication program;

(ii) Who was not operating a commercial vehicle at the time of the offense;

(iii) Who has not previously been convicted of and does not have pending any former or subsequent charges under this section; and

(iv) Who has provided the court with justification as to why nonadjudication is appropriate.

(c) Nonadjudication may be initiated upon the filing of a petition for nonadjudication or at any stage of the proceedings * * * in the discretion of the court; the court may withhold adjudication of guilt, defer sentencing, and upon the agreement of the offender to participate in a nonadjudication program, enter an order imposing requirements on the offender for a period of court supervision before the order of nonadjudication is entered. Failure to successfully complete a nonadjudication program subjects the person to adjudication of the charges against him and to imposition of all penalties previously withheld due to entrance into a nonadjudication program. The court shall immediately inform the commissioner of the conviction as required in Section 63-11-37.

(i) The court shall order the person to:

1. Pay the nonadjudication fee imposed under Section 63-11-31 if applicable;

2. Pay all fines, penalties and assessments that would have been imposed for conviction;

3. Attend and complete an alcohol safety education program as provided in Section 63-11-32 within six (6) months of the date of the order;

4. a. If the court determines that the person violated this section with respect to alcohol or intoxicating liquor, the person must install an ignition-interlock device on every motor vehicle * * * operated by the person, obtain an interlock-restricted license, and maintain that license for one hundred twenty (120) days * * * or * * * suffer a one-hundred-twenty-day suspension of the person's regular driver's license, * * * during which time the person must not operate any vehicle.

b. If the court determines that the person violated this section by operating a vehicle when under the influence of a substance other than alcohol that has impaired the person's ability to operate a motor vehicle, including any drug or controlled substance which is unlawful to possess under the Mississippi Controlled Substances Law, the person must submit to a one-hundred-twenty-day period of a nonadjudication program that includes court-ordered drug testing at the person's own expense not less often than every thirty (30) days, during which time the person may drive if compliant with the terms of the program, or suffer a one-hundred-twenty-day suspension of the person's regular driver's license, during which time the person will not operate any vehicle.

(ii) Other conditions * * * that may be imposed by the court * * * include, but are not limited to, alcohol or drug screening, or both, proof that the person has not committed any other traffic violations while under court supervision, proof of immobilization or impoundment of vehicles owned by the offender if required, and attendance at a victim-impact panel.

(d) The court may enter an order of nonadjudication only if the court finds, after a hearing or after ex parte examination of reliable documentation of compliance, that the offender has successfully completed all conditions imposed by law and previous orders of the court. The court shall retain jurisdiction over cases involving nonadjudication for a period of not more than two (2) years.

(e) (i) The clerk shall immediately forward a record of every * * * person placed in a nonadjudication program and of every nonadjudication order to the Department of Public Safety * * * for inclusion in the permanent confidential registry of all cases that are nonadjudicated * * * under this subsection (14).

(ii) Judges, clerks and prosecutors involved in the trial of implied consent violations and law enforcement officers involved in the issuance of citations for implied consent violations shall have access to the confidential registry for the purpose of determining whether a person has previously been the subject of a nonadjudicated case and 1. is therefore ineligible

for another nonadjudication; 2. is ineligible as a first offender for a violation of this section; or 3. is ineligible for expunction of a conviction of a violation of this section.

(iii) The Driver Services Bureau of the department shall have access to the confidential registry for the purpose of determining whether a person is eligible for a form of license not restricted to operating a vehicle equipped with an ignition-interlock device.

(iv) The Mississippi Alcohol Safety Education Program shall have access to the confidential registry for research purposes only.

SECTION 6. Section 63-11-31, Mississippi Code of 1972, is amended as follows:

63-11-31. (1) (a) The provisions of this section are supplemental to the provisions of Section 63-11-30.

(b) (i) "Ignition-interlock device" means a device approved by the Department of Public Safety that connects a motor vehicle ignition system to a breath-alcohol analyzer and prevents a motor vehicle ignition from starting if the driver's blood alcohol level exceeds the calibrated setting on the device.

(ii) "Interlock-restricted license" means a driver's license bearing a restriction that limits the person to operation of vehicles equipped with an ignition-interlock device.

(c) A person who can exercise the privilege of driving only under an interlock-restricted license * * * must have an

ignition-interlock device installed and operating on all motor vehicles * * * owned or operated by the person * * *.

* * *

(d) A person who installs an ignition-interlock device * * * may obtain an interlock-restricted license * * *.

(2) (a) The cost of installation and operation of an ignition-interlock device shall be borne by the person to whom an interlock-restricted driver's license is issued, and the costs of court-ordered drug testing shall be borne by the person so ordered, unless the person is determined by the court to be indigent.

(b) (i) A person convicted under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Fifty Dollars (\$50.00), to be deposited in the Interlock Device Fund in the State Treasury unless the person is determined by the court to be indigent.

(ii) A person nonadjudicated under Section 63-11-30 shall be assessed by the court, in addition to the criminal fines, penalties and assessments provided by law for violations of Section 63-11-30, a fee of Two Hundred Fifty Dollars (\$250.00) to be deposited in the Interlock Device Fund in the State Treasury unless the person is determined by the court to be indigent.

(3) (a) The Department of Public Safety shall promulgate rules and regulations for the use of an ignition-interlock device. The Department of Public Safety shall approve which vendors shall be used to furnish the systems, may assess fees to the vendors, and shall prescribe the maximum costs to the offender for installation, removal, monthly operation, periodic inspections, calibrations and repairs.

(b) A person who has an ignition-interlock device installed in a vehicle shall:

(i) Provide proof of the installation of the device and periodic reporting for verification of the proper operation of the device;

(ii) Have the system monitored for proper use and accuracy as required by departmental regulation;

(iii) Pay the reasonable cost of leasing or buying, monitoring, and maintaining the device unless the person is determined to be indigent * * *; and

(iv) Obtain an ignition-interlock driver's license.

(4) (a) (i) A person who is limited to driving only under an interlock-restricted driver's license shall not operate a vehicle that is not equipped with an ignition-interlock device.

(ii) A person prohibited from operating a motor vehicle that is not equipped with an ignition-interlock device may

not solicit or have another person attempt to start or start a motor vehicle equipped with such a device.

(iii) A person may not start or attempt to start a motor vehicle equipped with an ignition-interlock device for the purpose of providing an operable motor vehicle to a person who is prohibited from operating a motor vehicle that is not equipped with an ignition-interlock device.

(iv) A person may not tamper with, or in any way attempt to circumvent, the operation of an ignition-interlock device that has been installed in a motor vehicle.

(v) A person may not knowingly provide a motor vehicle not equipped with a functioning ignition-interlock device to another person who the provider of the vehicle knows or should know is prohibited from operating a motor vehicle not equipped with an ignition-interlock device.

(b) A violation of this subsection (4) is a misdemeanor and upon conviction the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than * * * six (6) months, or both, unless the starting of a motor vehicle equipped with an ignition-interlock device is done for the purpose of safety or mechanical repair of the device or the vehicle, and the person subject to the restriction does not operate the vehicle.

(5) * * * In order to obtain an interlock-restricted license, a person must:

(* * * a) Be otherwise qualified to operate a motor vehicle, and will be subject to all other restrictions on the privilege to drive provided by law;

(* * * b) Submit proof that an ignition-interlock device is installed and operating on all motor vehicles * * * operated by the person; and

(* * * c) Pay the fee set forth in Section 63-1-43 to obtain the license without regard to indigence; no license reinstatement fee under Section 63-1-46 shall be charged for a person obtaining an interlock-restricted license.

* * *

(6) (a) In addition to the penalties authorized for any second or subsequent conviction under Section 63-11-30, the court shall order that all vehicles owned by the offender that are not equipped with an ignition-interlock device must be either impounded or immobilized pending further order of the court lifting the offender's driving restriction. However, no county, municipality, sheriff's department or the Department of Public Safety shall be required to keep, store, maintain, serve as a bailee or otherwise exercise custody over a motor vehicle impounded under the provisions of this section. The cost associated with any impoundment or immobilization shall be paid by the person convicted without regard to ability to pay.

(b) A person may not tamper with, or in any way attempt to circumvent, vehicle immobilization or impoundment ordered by the court under this section. A violation of this paragraph (b) is a misdemeanor and, upon conviction, the violator shall be fined an amount not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) or imprisoned for not more than * * * six (6) months, or both.

(7) (a) The Department of Public Safety shall promulgate rules and regulations for the use of monies in the Interlock Device Fund to offset the cost of device installation and operation by and court-ordered drug testing of indigent offenders.

(b) The court shall determine a defendant's indigence * * * based upon whether the defendant has access to adequate resources to pay the ignition-interlock fee and the costs of installation and maintenance of an ignition-interlock device, or the costs of court-ordered drug testing or both, and may further base the determination of indigence on proof of enrollment in one or more of the following types of public assistance:

- (i) Temporary Assistance for Needy Families (TANF);
- (ii) Medicaid assistance;
- (iii) The Supplemental Nutritional Assistance Program (SNAP), also known as "food stamps";
- (iv) Supplemental security income (SSI);

(v) Participation in a federal food distribution program;

(vi) Federal housing assistance;

(vii) Unemployment compensation; or

(viii) Other criteria * * * determined appropriate by the court.

(c) No more than ten percent (10%) of the money in the Interlock Device Fund in any fiscal year shall be expended by the department for the purpose of administering the fund.

(d) (i) Money in the Interlock Device Fund will be appropriated to the department to cover part of the costs of installing, removing and leasing ignition-interlock devices for indigent people who are required, * * * because of a conviction or nonadjudication under Section 63-11-30, to install an ignition-interlock device in all vehicles * * * operated by the person.

(ii) If money is available in the Interlock Device Fund, the department shall pay to the vendor, for one (1) vehicle per offender, up to Fifty Dollars (\$50.00) for the cost of installation, up to Fifty Dollars (\$50.00) for the cost of removal, and up to Thirty Dollars (\$30.00) monthly for verified active usage of the ignition-interlock device. The department shall not pay any amount above what an offender would be required to pay for the installation, removal or usage of an ignition-interlock device.

(8) In order to reinstate a form of driver's license that is not restricted to operation of an ignition-interlock equipped vehicle, the person must submit proof to the Department of Public Safety to substantiate the person's eligibility for an unrestricted license, which may be a court order indicating completion of sentence or final order of nonadjudication; in the absence of a court order, the proof may consist of the following or such other proof as the commissioner may set forth by regulation duly adopted under the Administrative Procedures Act:

(a) * * * Proof of successful completion of an alcohol safety program as provided in Section 63-11-32 if so ordered by the court;

(b) Payment of the reinstatement fee required under Section 63-1-46(1)(a);

(c) Payment of the driver's license fee required under Section 63-1-43 * * *;

(d) A certificate of liability insurance or proof of financial responsibility; and

(e) (i) For those driving under an interlock-restricted license, a declaration from the vendor, in a form provided or approved by the Department of Public Safety, certifying that there have been none of the following incidents in the last thirty (30) days:

1. An attempt to start the vehicle with a breath alcohol concentration of 0.04 or more;

2. Failure to take or pass any required
retest; or

3. Failure of the person to appear at the
ignition-interlock device vendor when required for maintenance,
repair, calibration, monitoring, inspection, or replacement of the
device; or

(ii) For a person who violated Section 63-11-30
with respect to drugs other than alcohol, proof of successful
compliance with all court-ordered drug testing; or

(iii) Both subparagraphs (i) and (ii) of this
paragraph (e) if applicable.

(9) The court may extend the interlock-restricted period if
the person had a violation in the last thirty (30) days.

(* * *¹⁰) * * * The court that originally ordered
installation of the ignition-interlock device for a violation of
Section 63-11-30 and a court in the municipality or county in
which the violation occurred have jurisdiction over an offense
under this section.

(11) A person who voluntarily obtains an
interlock-restricted license may convert at any time to any other
form of license for which the person is qualified.

(12) The Department of Public Safety shall require all
manufacturers of ignition-interlock devices to report
ignition-interlock data in a consistent and uniform format as
prescribed by the Department of Public Safety. Ignition-interlock

vendors must also use the uniform format when sharing data with courts ordering an ignition interlock, with alcohol safety education programs, or with other treatment providers.

SECTION 7. Section 63-11-37, Mississippi Code of 1972, is amended as follows:

63-11-37. (1) It shall be the duty of the trial judge, upon conviction of * * * a person under Section 63-11-30, to mail or otherwise deliver in a method prescribed by the commissioner a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a certified copy of the abstract of the court record within five (5) days to the Commissioner of Public Safety at Jackson, Mississippi. The trial judge in municipal and justice courts shall show on the docket and the trial judge in courts of record shall show on the minutes:

(a) Whether * * * a chemical test was given and the results of the test, if any; and

(b) * * * Whether conviction was based in whole or in part on the results of such a test.

(2) The abstract of the court record shall show the date of the conviction, the results of the test if there was one, and the penalty, so that a record of same may be made by the Department of Public Safety.

(3) For the purposes of Section 63-11-30, a bond forfeiture shall operate as and be considered as a conviction.

(4) A trial court clerk who fails to provide a true and correct copy of the traffic ticket, citation or affidavit evidencing the arrest that resulted in the conviction and a copy of the abstract of the court record within five (5) days as required in subsection (1) of this section is guilty of a civil violation and shall be fined One Hundred Dollars (\$100.00), for which civil fine the clerk bears sole and personal responsibility. Each instance of failure is a separate violation.

SECTION 8. Section 63-1-5, Mississippi Code of 1972, is amended as follows:

63-1-5. (1) (a) No person shall drive or operate a motor vehicle or an autocyple as defined in Section 63-3-103 upon the highways of the State of Mississippi without first securing an operator's license to drive on the highways of the state, unless specifically exempted by Section 63-1-7.

(b) The types of operator's licenses are:

- (i) Class R;
- (ii) Class D;
- (iii) Class A, B or C commercial license governed by Article 5 of this chapter;
- (iv) Intermediate license; and
- (v) * * * Interlock-restricted license as prescribed in Section 63-11-31.

(2) (a) Every person who makes application for an original license or a renewal license to operate any single vehicle with a

gross weight rating of less than twenty-six thousand one (26,001) pounds or any vehicle towing a vehicle with a gross vehicle weight rating not in excess of ten thousand (10,000) pounds other than vehicles included in Class C, vehicles which require a special endorsement or to operate a vehicle as a common carrier by motor vehicle, taxicab, passenger coach, dray, contract carrier or private commercial carrier as defined in Section 27-19-3, other than those vehicles for which a Class A, B or C license is required under Article 5 of this chapter, may, in lieu of the Class R regular driver's license, apply for and obtain a Class D driver's license. The fee for the issuance of a Class D driver's license shall be as set forth in Section 63-1-43 and the Class D license shall be valid for the term prescribed in Section 63-1-47. Except as required under Article 5 of this chapter, no driver of a pickup truck shall be required to have a Class D or a commercial license regardless of the purpose for which the pickup truck is used.

(b) Persons operating vehicles listed in paragraph (a) of this subsection for private purposes or in emergencies need not obtain a Class D license.

(3) An * * * interlock-restricted license allows a person to drive only a motor vehicle equipped with an ignition interlock device.

(4) A person who violates this section is guilty of a misdemeanor and, upon conviction, may be punished by imprisonment

for not less than two (2) days nor more than six (6) months, by a fine of not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00), or both.

SECTION 9. (1) When a state, county or local law enforcement officer stops a person with the intent to effectuate an arrest of the person, if the officer has the capability of doing so, the officer shall, at the time of the stop or as soon as possible thereafter, conduct a criminal history background check on the person being arrested using the National Crime Information Center (NCIC) database. If the stop results in the officer arresting the person, the officer shall make a notation of the person's criminal history at the time of arrest. If the criminal history cannot be obtained at the time of the arrest, it must be accessed and noted at the person's booking. The Federal Bureau of Investigation arrest numbers or system identification numbers of prior arrests or convictions shall be noted and become a part of the person's law enforcement record until the disposal of the matter giving rise to the grounds for arrest. A copy of the person's NCIC driver's license query shall become a part of the person's law enforcement record until the disposal of the matter giving rise to the grounds for arrest.

(2) Subsection (1) of this section shall apply without regard to whether the person:

(a) Is arrested for a misdemeanor or felony offense;

(b) Is issued a citation in lieu of continued custody:

or

(c) Is arrested without a warrant.

SECTION 10. Section 63-11-49, Mississippi Code of 1972, that authorizes impoundment and forfeiture of a vehicle used in a third or subsequent DUI offense, is repealed.

SECTION 11. Section 63-11-51, Mississippi Code of 1972, which provides for institution of forfeiture proceedings, is repealed.

SECTION 12. Section 63-11-53, Mississippi Code of 1972, which provides for the disposition of forfeited vehicles, is repealed.

SECTION 13. This act shall take effect and be in force from and after October 1, 2016.

PASSED BY THE SENATE
April 19, 2016



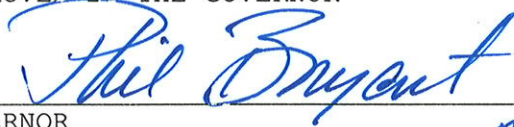
PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
April 19, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

May 13, 2016
11:10 AM